



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

512-804-4000 telephone • 512-804-4811 fax • [www.tdi.texas.gov](http://www.tdi.texas.gov)

## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

MAINLAND MEDICAL CENTER  
3701 KIRBY DR STE 1288  
HOUSTON TX 77098-3916

#### **Respondent Name**

ACE AMERICAN INSURANCE COMPANY

#### **Carrier's Austin Representative Box**

Box Number 15

#### **MFDR Tracking Number**

M4-09-8018-01

#### **MFDR Date Received**

May 7, 2009

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** "it is the position of the Provider that all charges relating to the admission of this claimant are due and payable and not subject to the improper reductions taken by the carrier in this case. The carrier's position is incorrect and in violation of Rule § 134.403."

**Amount in Dispute:** \$3,351.67

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "not repriced per Contract procedure codes not pd under OPPS. Pd by fiscal intermediaries under a fee Schedule Pd per fee"

**Response Submitted by:** Specialty Risk Services, 300 S. State St., Syracuse, New York 13702

### **SUMMARY OF FINDINGS**

Date(s) of Service	Disputed Services	Amount In Dispute	Amount Due
May 7, 2008 to June 19, 2008	Outpatient Hospital Services	\$3,351.67	\$0.00

### **FINDINGS AND DECISION**

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

#### **Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.403, titled *Hospital Facility Fee Guideline – Outpatient*, sets out the reimbursement guidelines for facility services provided in an outpatient acute care hospital.
3. 28 Texas Administrative Code §134.203, titled *Medical Fee Guideline for Professional Services*, sets out the reimbursement guidelines for professional medical services.
4. The services in dispute were reduced/denied by the respondent with the following reason codes:
  - W1 – WORKERS COMPENSATION STATE FEE SCHEDULE ADJUSTMENT. THIS SERVICE IS RE-PRICED ACCORDING TO THE TX PHYSICIAN FEE SCHEDULE.

## **Issues**

1. Are the disputed services subject to a contractual agreement between the parties to this dispute?
2. Did the respondent raise new issues or defenses after the filing of the request for medical dispute resolution?
3. What is the applicable rule for determining reimbursement for the disputed services?
4. What is the recommended payment amount for the services in dispute?
5. Is the requestor entitled to reimbursement?

## **Findings**

1. The insurance carrier reduced or denied disputed services with reason code W1 – “WORKERS COMPENSATION STATE FEE SCHEDULE ADJUSTMENT. THIS SERVICE IS RE-PRICED ACCORDING TO THE TX PHYSICIAN FEE SCHEDULE.” No reductions or denials were found on the explanations of benefits related to a contract or contractual fee arrangement. Further, the respondent’s rationale for maintaining the reduction or denial, as stated in the insurance carrier’s response is “not repriced per Contract procedure codes not pd under OPPS. Pd by fiscal intermediaries under a fee Schedule Pd per fee.” However, notation was found on the explanations of benefits that services were “Paid in accordance with: Coventry Owned/Accessed Contract.” Review of the submitted information found no documentation to support that the disputed services are subject to a contractual fee arrangement between the parties to this dispute. Nevertheless, on October 21, 2010, pursuant to 28 Texas Administrative Code §133.307(e)(1), effective May 25, 2008, 33 *Texas Register* 3954, which states that “The Division may request additional information from either party to review the medical fee issues in dispute,” the Division requested the respondent to provide a copy of the referenced contract(s) between the alleged network and the requestor, as well as documentation to support notice to the hospital that the insurance carrier, Ace American Insurance Company, was authorized to access the requestor’s network fee agreement. While the respondent did submit documentation to support a contractual fee arrangement between the health care provider and the third party network referenced on the explanation of benefits, the contract was dated in 2004. No documentation was found to support whether the contract was in effect at the time the services were rendered in 2008. Moreover, no documentation was submitted to support that the insurance carrier, Ace American Insurance Company, was entitled to access the requestor’s alleged contractual fee arrangement with the third party network on the date of the disputed services. The respondent presented no contract between the network and the insurance carrier to establish that the insurance carrier was authorized, and under what terms allowed, to access the requestor’s alleged network fee arrangement. Nor was any list of authorized payors found with the submitted materials to show that Ace American Insurance Company was an authorized payor under the terms of the alleged contract on the date that the disputed services were provided. The Division notes that article 1.6 of the submitted contract requires that the network “will supply Contract Facility with a list of all Payors that have entered into Payor Agreements to utilize the Preferred Provider Panel.” No such list was submitted to the Division for consideration in this review. Additionally, at article 3.13, the submitted contract requires that the network “shall periodically provide Contract Facility with an up-to-date list of all Payors and shall promptly advise Contract Facility, in writing of any changes in the Payor list.” No list of any kind was provided to the Division for consideration in this review. Furthermore, article 1.3 requires that “any notice required to be given pursuant to the terms and provisions of the Contract shall be in writing and shall be sent by overnight mail or certified mail, return receipt requested.” Review of the submitted documentation finds no information to support that the hospital had been notified of such a list in writing by mail, as required by the terms regarding notice in the contract. Nor was any documentation submitted to support that the requestor had been specifically notified, in accordance with the notice provisions of the contract, that Ace American Insurance Company was an authorized network payor. While the respondent did submit a copy of a September 2008 newsletter containing a list of health care networks, it does not contain a list of contracted payors. The Division further notes that the date of the newsletter is several months after the date of service in dispute. Moreover, the address on the accompanying envelope is, though obscured, clearly not the address of the requestor, and therefore fails to support that notice was mailed to the health care provider in accordance with the requirements of the contract. Lastly, the newsletter does not list the name of Ace American Insurance Company. After thoroughly considering the submitted documentation, the Division concludes that the respondent has failed to support that the insurance carrier, Ace American Insurance Company, was entitled to access a contractual fee arrangement between the health care provider and the third party network. Moreover, the respondent has failed to establish that the disputed services are subject to a specific fee schedule set in a contract between the parties that complies with the requirements of Labor Code §413.011. The disputed services will therefore be reviewed for payment in accordance with applicable Division rules and fee guidelines.
2. In the respondent’s reply to the Division’s request for additional information, the respondent states “please also be advised that Coventry determined that the bill in dispute was priced incorrectly and has adjusted payment at the correct contract rate. (please see attached pricing sheet.)” Firstly, as stated above, the insurance carrier has failed to establish that it is entitled to access a contractual fee arrangement related to the services in dispute. Such reductions are not supported. Secondly, per 28 Administrative Code §133.307(d)(2)(B), “The response shall address only those denial reasons presented to the requestor prior to the date the request for

MDR was filed with the Division and the other party. Any new denial reasons or defenses raised shall not be considered in the review.” The only denial/reduction reason presented to the requestor prior to the filing of the dispute was reason code: W1 – “WORKERS COMPENSATION STATE FEE SCHEDULE ADJUSTMENT. THIS SERVICE IS RE-PRICED ACCORDING TO THE TX PHYSICIAN FEE SCHEDULE.” The date that the MDR request was filed with the Division was May 7, 2009. The date of the letter raising the new denial reasons or defenses is November 4, 2010. This date is after the date that the request for MDR was filed. Therefore, the Division concludes that the respondent has not met the requirements of §133.307(d)(2)(B), and the newly raised denial reasons or defenses shall not be considered in this review.

3. This dispute relates to facility services performed in an outpatient hospital setting with reimbursement subject to the provisions of 28 Texas Administrative Code §134.403, which requires that the reimbursement calculation used for establishing the maximum allowable reimbursement (MAR) shall be the Medicare facility specific amount, including outlier payment amounts, determined by applying the most recently adopted and effective Medicare Outpatient Prospective Payment System (OPPS) reimbursement formula and factors as published annually in the Federal Register with the application of minimal modifications as set forth in the rule. Per §134.403(f)(1), the sum of the Medicare facility specific reimbursement amount and any applicable outlier payment amount shall be multiplied by 200 percent, unless a facility or surgical implant provider requests separate reimbursement of implantables. Review of the submitted documentation finds that separate reimbursement for implantables was not requested.
4. Under the Medicare Outpatient Prospective Payment System (OPPS), each billed service is assigned an Ambulatory Payment Classification (APC) based on the procedure code used, the supporting documentation and the other services that appear on the bill. A payment rate is established for each APC. Depending on the services provided, hospitals may be paid for more than one APC per encounter. Payment for ancillary and supportive items and services, including services that are billed without procedure codes, is packaged into payment for the primary service. A full list of APCs is published quarterly in the OPPS final rules which are publicly available through the Centers for Medicare and Medicaid Services (CMS) website. Reimbursement for the disputed services is calculated as follows:
  - Procedure code 97001 has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$68.24. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$94.65
  - Procedure code 97032, date of service May 9, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$15.41. This amount multiplied by 2 units is \$30.82. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$42.75
  - Procedure code 97032, date of service May 7, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$15.41. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$21.38
  - Procedure code 97032, date of service May 12, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$15.41. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$21.38

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service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$15.41. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$21.38

- Procedure code 97110, date of service May 9, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$26.75. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$37.10
- Procedure code 97124, date of service May 9, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$21.39. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$29.67
- Procedure code 97124, date of service May 12, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$21.39. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$29.67
- Procedure code 97124, date of service May 14, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$21.39. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$29.67
- Procedure code 97124, date of service May 16, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$21.39. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$29.67
- Procedure code 97110 has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$26.75. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$37.10
- Procedure code 97124 has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$21.39. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$29.67

- Procedure code 97110, date of service May 23, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$26.75. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$37.10
- Procedure code 97124, date of service May 23, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$21.39. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$29.67
- Procedure code 97110, date of service May 27, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$26.75. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$37.10
- Procedure code 97110, date of service May 28, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$26.75. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$37.10
- Procedure code 97110, date of service May 30, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$26.75. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$37.10
- Procedure code 97140, date of service May 19, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$24.78. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$34.37
- Procedure code 97140, date of service May 27, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$24.78. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$34.37
- Procedure code 97140, date of service May 28, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the

service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$24.78. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$34.37

- Procedure code 97140, date of service May 30, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$24.78. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$34.37
- Procedure code 97003, date of service May 7, 2008, has a status indicator of A, which denotes services paid under a fee schedule or payment system other than OPPS. Per 28 Texas Administrative Code §134.403(h), for outpatient services for which Medicare reimburses using fee schedules other than OPPS, reimbursement is made using the applicable Division fee guideline in effect for that service on the date the service was provided. Payment for this service is calculated according to the Medical Fee Guideline for Professional Services, §134.203(c). The fee listed for this code in the Medicare Physician Fee Schedule is \$73.09. This amount divided by the Medicare conversion factor of 38.087 and multiplied by the Division conversion factor of 52.83 yields a MAR of \$101.38

5. The total allowable reimbursement for the services in dispute is \$990.68. This amount less the amount previously paid by the insurance carrier of \$1,099.15 leaves an amount due to the requestor of \$0.00. No additional reimbursement can be recommended.

### **Conclusion**

For the reasons stated above, the Division finds that the requestor has not established that additional reimbursement is due. As a result, the amount ordered is \$0.00.

### ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

### **Authorized Signature**

_____	<u>Grayson Richardson</u>	<u>January 16, 2014</u>
Signature	Medical Fee Dispute Resolution Officer	Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the Medical Fee Dispute Resolution Findings and Decision** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**